

REMARKS

After the foregoing Amendment, claims 1, 3, and 5-28 are pending in this application. Claims 6, 8, 11-13 and 15-25 were withdrawn from consideration. Claims 2 and 4 are cancelled without prejudice. Claims 1, 3, and 5, 7, 9-10, and 14 are amended to correct minor informalities. New claims 26-28 are added to recite alternative limitations previously recited in claims 2, 5, and 14, respectively. Support for the amendments can be found in the original claims and the specification at paragraph [0019] and [0060]. Applicant submits that no new matter is introduced into the application by these amendments.

Claim Objections

The Action objects to claims 1-5, 7, 9, 10, and 14 because they did not start with “A” or “The”; claims 1 and 9 because “taurine” was misspelled; and claim 9 because it did not end with a period. The Action required correction and Applicant amended the claims to comply. Applicant respectfully requests withdrawal of the objections.

Claim Rejections - 35 USC §112, second paragraph

The Action rejects claims 1, 2, 4, 5, 7, 10, and 14 as indefinite.

According to the Action, it is unclear whether the “bark extract” recited in claim 1 is required to contain flavanoids. Claim 1, as amended, recites: “bark extract comprising flavonoids....”

The Action states that claims 2, 4, and 14 recite narrower ranges within broad ranges, lists the ranges at issue, and rejects the claims for reciting ranges within ranges. The broad range recited in claim 2 is incorporated into claim 1, the narrower range is recited in new claim 26, and claim 2 is cancelled. Based on the Action's description of claim 4, Applicant determined that claim 5 was the claim at issue. Claims 5 and 14 are amended to delete the narrower ranges recited, which are presented in new claims 27 and 28, respectively.

The Action states that the use of the trademark Pycnogenol® in claim 9 renders the claim indefinite. Claim 9 is amended to recite the non-trademark name "pycnogenol" and support for the amendment can be found in paragraphs [0019] and [0060].

Applicant made corrective amendments and believes the rejections are overcome. Applicant respectfully requests withdrawal of the 35 U.S.C. §112, second paragraph rejections of claims 1, 2, 4, 5, 7, 10, and 14.

Claim Rejections - 35 USC §103

The Action rejects claims 1-5, 7, 9, 10, and 14 as unpatentable under 35 U.S.C. §103(a) over Krotzer (WO 99/61038) in view of Thomas (U.S. patent 5,972,985).

The Action admits that Krotzer does not teach a composition including pine bark pycnogenols or grape seed extract. And the Action only alleges that the

combination of elements is found in the combination of Krotzer and Thomas. Action at pages 4-5. But the Action admits that Krotzer is not analogous art: Krotzer “teaches adding antioxidants to [a] composition to protect the brain.” Page 4.

In contrast, the present specification states:

The drink composition contains flavonoids that, in addition to their antioxidant properties, balance the function of the muscles and mind, thus acting as relaxants and agents that counterbalance the effects of adrenalin. Such flavonoids are present in extracts from bark of a conifer, for instance a coastal pine (*Pinus maritima*), said extract containing proantocyanidins (compounds belonging to pycnogenols) described in US 4,698,360, known with the trade name Pycnogenol®. Also green tea extract is rich with flavonoids. Bark extracts containing other flavonoids useful in the invention include extracts from the Finnish pine (*Pinus sylvestris*), or grapeseed extracts, both said extracts having very similar effects and containing similar active agents such as oligomeric proantocyanidins (OPC), catechins and polyphenols.

Paragraph [0019], underlining added. This passage clearly indicates that it is not antioxidant properties used to “protect the brain” which indicate the compositions. Instead, the compositions balance the function of the muscles and mind, act as relaxants and counterbalance the effects of adrenalin. One of ordinary skill in the art would not have been motivated to start with Krotzer in pursuit of a composition that can balance the function of the muscles and mind, act as a relaxant and counterbalance the effects of adrenalin.

The Action also admits that Thomas is not analogous art: Thomas “teaches using pycnogenols and grape seed extract together as antioxidants that protect the

brain.” In the present invention, the compositions result in a new and synergistic effect using bark or seed extracts in combination with glucose, fructose, guarana and taurine. As admitted in the Action, the object of Thomas is not a synergetic effect of balancing the function of muscles and mind, providing relaxants and counterbalancing the effects of adrenalin. One of ordinary skill in the art would not have combined Thomas with Krotzer because they would not have looked to antioxidant art to solve the problems indicated or arrive at a composition that delivers this synergetic effect. Nor would they expect to arrive at the claimed composition.

Based on the foregoing, Applicant respectfully submits that the rejection of claim 1-5, 7, 9, 10, and 14 as unpatentable under 35 U.S.C. §103(a) is overcome and requests withdrawal of the same.

Conclusion

If the Examiner believes that any matters need to be addressed in order to place this application in condition for allowance, or that a telephone interview will help to advance the prosecution of this application, the Examiner is invited to contact the undersigned by telephone at the Examiner's convenience.

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Application No.: 10/516,477

In view of the foregoing, Applicants respectfully submit that the present application, including claims 1, 3, 5, 7, 9, 10, 14, and 26-28, is in condition for allowance and a notice to that effect is respectfully requested.

Respectfully submitted,

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